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Person To Contact: _____, ID No.

Telephone Number:

In Re:

Refer Reply To:
CC:PSI:B04
PLR-109699-16
Date:
September 15, 2016

Legend:

Grantor =
Trusts =

Court =

State =
Statute =

Year 1 =

Year 2 =

Year 3 =

Date 1 =

Date 2 =

Dear :

This responds to your authorized representative's letter of March 22, 2016, and subsequent correspondence, requesting a ruling regarding a state court reformation of several trusts for federal gift tax purposes.

The facts submitted and the representations made are as follows. Beginning in Year 1 and through Year 2, Grantor retained an attorney to draft several irrevocable trusts (collectively, "Trusts"; individually, "Trust"). Year 1 is a year after September 20, 1999. The first page of each trust instrument provides as follows:

WHEREAS, the Grantor wishes to establish an irrevocable Grantor Retained Annuity Trust, the retained interest of which is intended to constitute a qualified interest within the meaning of Section 2702(b)(1) of the Internal Revenue Code.

Article Ninth of each trust instrument provides as follows:

The Grantor has been fully advised concerning the legal effects of the execution of this Indenture and has been fully informed regarding the character and amount of the property transferred and conveyed hereby. The Grantor affirms her personal decision that this Trust shall be irrevocable. The Trustees shall have the power to amend the Trust Indenture in any manner that may be required for the purpose of ensuring that the Grantor's retained interest in the Trust qualifies and continues to qualify as a "qualified interest" within the meaning of Section 2702(b)(1) of the Code.

In drafting each trust instrument, Grantor's attorney failed to include language prohibiting the trustee from issuing a note, other debt instrument, option or other similar financial arrangement in satisfaction of the annuity obligation as required by § 25.2702-3(d)(6) of the Gift Tax Regulations.

In Year 2, Grantor was made aware of this failure when her son retained a new attorney to review Grantor's estate plan. On Date 1, in Year 2, the trustees of Trusts filed an action with Court seeking reformation of each Trust to correct the scrivener's error.

On Date 2, in Year 3, Court issued an order reforming Trusts to include the language required by § 25.2702-3(d)(6), retroactive to the date each Trust was established.

Grantor requests a ruling that as a result of the judicial reformation of Trusts to correct scrivener's error, Grantor's interest in each Trust is a qualified interest under §§ 25.2702-2 and 25.2702-3, effective as of the date each Trust was established.

Law and Analysis:

Section 2702(a)(1) provides that solely for purposes of determining whether a transfer of an interest in trust to (or for the benefit of) a member of the transferor's family is a gift (and the value of such transfer), the value of any interest in such trust retained by the transferor or any applicable family member (as defined in § 2701(e)(2)) shall be determined as provided in § 2702(a)(2).

Section 2702(a)(2)(A) provides that the value of any retained interest which is not a qualified interest shall be treated as being zero.

Section 2702(b) provides that the term "qualified interest" means: (1) any interest which consists of the right to receive fixed amounts payable not less frequently than annually, (2) any interest which consists of the right to receive amounts which are payable not less frequently than annually and are a fixed percentage of the fair market value of the property in the trust (determined annually), and (3) any noncontingent remainder interest if all of the other interests in the trust consist of interests described in paragraph (1) or (2).

Section 25.2702-2(a)(6) provides, in part, that a qualified interest means a qualified annuity interest, a qualified unitrust interest, or a qualified remainder interest.

Section 25.2702-3(b)(1) provides that an interest is a qualified annuity interest only if it meets the requirements of this paragraph and § 25.2702-3(d). A qualified annuity interest is an irrevocable right to receive a fixed amount. The annuity amount must be payable to (or for the benefit of) the holder of the annuity interest at least annually. A right of withdrawal, whether or not cumulative, is not a qualified annuity interest. Issuance of a note, other debt instrument, option, or other similar financial arrangement, directly or indirectly, in satisfaction of the annuity amount does not constitute payment of the annuity amount.

Section 25.2702-3(d)(6) provides that in the case of a trust created on or after September 20, 1999, the trust instrument must prohibit the trustee from issuing a note, other debt instrument, option, or other similar financial arrangement in satisfaction of the annuity or unitrust payment obligation.

State Statute provides that:

Upon application of any interested person, to achieve the settlor's tax objectives the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intent. The court may provide that the modification has retroactive effect.

In *Commissioner v. Estate of Bosch*, 387 U.S. 456 (1967), the Supreme Court considered whether a state trial court's characterization of property rights conclusively binds a federal court or agency in a federal estate tax controversy. The Court concluded that the decision of a state trial court as to an underlying issue of state law should not be controlling when applied to a federal statute. Rather, the highest court of the state is the best authority on the underlying substantive rule of state law to be applied in the federal matter. If there is no decision by that court, then the federal authority must apply what it finds to be state law after giving proper regard to the state trial court's determination and to relevant rulings of other courts of the state. In this respect, the federal agency may be said, in effect, to be sitting as a state court.

In this case, each trust instrument provides that Grantor's retained interest is intended to constitute a qualified interest within the meaning of § 2702(b)(1). However, the attorney retained to draft each trust instrument failed to include in each instrument the prohibition required by § 25.2702-3(d)(6) thus causing the interest Grantor retained in each Trust to fail to constitute a qualified interest within the meaning of § 2702(b)(1). The trust instruments and State Statute permit the amendment of each Trust.

Accordingly, based on the facts submitted and the representations made, we conclude that as a result of the judicial reformation of Trusts to correct scrivener's error, Grantor's interest in each Trust is a qualified interest under §§ 25.2702-2 and 25.2702-3, effective as of the date each Trust was created.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Leslie H. Finlow

Leslie H. Finlow
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure:
Copy of this letter for § 6110 purposes

cc: